

**E:SDO' NA:NA:XI:NAY CODE**

**Of The**

**Hoop Valley Tribe**

**TITLE 4B**

**Hoop Valley Tribal Code**

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## 1. SHORT TITLE, PURPOSE AND DEFINITIONS

### A. Short Title

This title shall be known as "The Hoopa Valley Tribe E:sdo' Na:Na: Xi:nay Code."

### B. Purpose

The E:sdo' Na:Na: Xi:nay Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable and to recommend or court order participation in the Hoopa Valley Tribe Juvenile Wellness Court;
3. To remove the legal consequences of criminal behavior from children committing delinquent acts, and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of the Hoopa Valley Tribal Community;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
5. To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
6. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and;
7. To provide a forum where an Indian child complained or alleged to be "delinquent" or as having committed a "status offense" in other jurisdictions may be referred for adjudication and/or disposition.

### C. Definitions

1. **"Adjudicatory Hearing"**: A proceeding in the E:sdo' Na:Na: Xi:nay Court to determine whether a child has committed a specific "delinquent act" as set forth in a petition.
2. **"Adult"**: An individual who is eighteen (18) years of age or older or a person that has been declared legally emancipated by a Court of competent jurisdiction.
3. **"Alcohol, Intoxicating Beverages, or Liquor"**: All forms of alcohol that are manufactured, sold, and commonly used for human consumption.

4. **"Alcohol or Substance Abuse Emergency Shelter or Halfway House"**: An appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
5. **"Child"**: A person under 18 years of age and not an adult. Whenever necessary, the singular form shall be interpreted as the plural, i.e., child interpreted as children.
6. **"Child-Indian" or "Indian Child"**: A child who is an enrolled member of a federally recognized tribe or a child who is eligible for membership in a federally recognized Tribe.
7. **"Community Service"**: A dispositional or consent decree option that requires an individual to donate time and labor for the betterment of the Hoopa Valley Tribal Community.
8. **"Consent Decree"**: A court order which suspends a "juvenile delinquent" proceeding prior to adjudication and continues the child or the family under supervision under terms and conditions agreed to by all parties.
9. **"Controlled Substance"**: The controlled substances referenced by this code are defined by Schedules I through V of the State of California Health and Safety Code; Sections 11054, 11055, 11056, 11057, and 11058 that are in effect at the time of the offense.
10. **"Counsel"**: An advocate, spokesperson or attorney.
11. **"Court" or "E:sdo' Na:Na: Xi:nay Court"**: The E:sdo' Na:Na: Xi:nay Court of the Hoopa Valley Tribe.
12. **"Curriculum Change"**: Includes but is not limited to: (a) a change in a child's instructor, if available; (b) a change in the scheduling of a child's classes, if available; (c) reassignment of a child into another class section, if available; (d) a change in the content of a child's course of instruction, if available; and (e) a change in the child's school, if available. (See the definition of "family in need of services.")
13. **"Custodian"**: A person, other than a parent or guardian, who cares for, controls, and maintains a child.
14. **"Delinquent Act"**: Any one of the acts listed in sections 2, 3, or 4 of this code, committed by a child.
15. **"Detention"**: Exercising authority over a child by physically placing the child in any juvenile facility designated by the court and restricting the child's movement in that facility.
16. **"Dispositional Hearing"**: A proceeding in the E:sdo' Na:Na: Xi:nay Court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "delinquent act(s)."
17. **"Diversion Program"**: An informal or formal plan or therapeutic course with the goal of treating alcohol, substance abuse, behavioral problems, or another malady.

18. **"Domicile"**: A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
19. **"Drugs"**: See the definition of "Controlled Substance."
20. **"Eligible Family Member"**: A family member of an admitted or court ordered Na:tini-x'we' Na:xo'-xi-nayi-din court participant.
21. **"Eligible Household Member"**: A member of the household of an admitted or court ordered Na:tini-x'we' Na:xo'-xi-nayi-din court participant.
22. **"Emergency Foster Home"**: A home that is licensed to accept emergency placements of children at any hour of the day or night.
23. **"Extended Family"**: Any person related by blood or marriage to the family or any individual who is viewed by the family as a relative (including legal guardian or custodian) or in accordance with the customs of the Hoopa Valley Tribe.
24. **"Immediate Family"**: Any spouse, parent, child, any person related by blood or marriage within the second degree.
25. **"Family in Need of Services" Means:**
- a) a family whose child commits a delinquent act when the family consents (consent of one family member shall not be valid on family members that do not consent) in writing to the intervention of the court to provide the treatment, rehabilitation or services needed by the child and his/her family; or
  - b) a family of a child who commits a delinquent act, where the child's physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) or family members responsible for the child's welfare.
- (See chapters 18 through 19 of this code for specific "family in need of services" procedures).
26. **"Fine"**: A dispositional option that requires financial payment ordered by the Court.
27. **"Foster Home"**: Placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18). Placement must comply with Title 14 of the Hoopa Valley Tribal Code.
28. **"Guardian"**: A person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter, and control of a child.
29. **"Group Home"**: A residential detention facility which is licensed to care for children under the age of eighteen (18).
30. **"Harm to a child's physical or mental health or welfare"**: occurs in a case where there exists evidence of injury to the child, including but not limited to:

A. Any case where the child exhibits evidence of:

- (1) skin bruising or any other internal bleeding,
- (2) any injury to skin causing bleeding,
- (3) burn or burns,
- (4) poisoning,
- (5) fracture of any bone,
- (6) subdural hematoma,
- (7) soft tissue swelling,
- (8) extreme pain,
- (9) death, or
- (10) disfigurement or impairment of any bodily organ, and such injury is inflicted by other than accidental means, by excessive corporal punishment or where the history given concerning such condition or death is inconsistent or at variance with the degree or type of such condition or death; or

B. Any case where the child has been the victim of a sexual offense; or

C. Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture or medically determinable impairments and disabilities; or

D. Any case where the physical health of the child is visibly bad because the person responsible for the child's welfare has not regularly or in a timely manner provided the child with adequate food, clothing, shelter, physical or mental care, health care or supervision, when financially able to do so or if not financially able to do so, after having been offered financial assistance or health care or other reasonable means to do so and such person refuses such assistance or continues to fail to adequately care for the child. For purposes of this section "health care" means any medical or non-medical health care permitted or authorized under laws applying within the Hoopa Valley Indian Reservation; provided, however, that a person responsible for the child's welfare who, while legitimately practicing his or her religious beliefs, does not specify medical treatment for a child shall not for that reason alone be considered as harming or threatening harm to the child; or

E. Any case where the child is provided with a controlled substance. However, this paragraph shall not apply to a child's family who provides such drugs to the child pursuant to the direction or prescription of a licensed health practitioner;

31. **"He/His"**: The use of he/his means he or she, his or her, and singular includes plural.

32. **"House Arrest"**: A dispositional option that confines a juvenile to remain on the property of his domicile.



33. **"Interim Care"**: The status of temporary physical control of a child whose family is "in need of services" (see the definition of "family in need of services").
34. **"Intoxicated"**: Visible lack of body control and slurred speech under circumstances that would indicate to a reasonable person it is more likely than not the conditions are not natural and are caused by drugs or alcohol. The strong odor associated with alcohol on the person's breath may be an additional factor if present.
35. **"Juvenile Facility"**: Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes (see individual definitions).
36. **"Juvenile Delinquent"**: A child who commits a "delinquent act".
37. **"Juvenile Shelter Care Facility"**: Any juvenile facility other than a secure juvenile detention facility (see the definitions of "juvenile facility" and "secure juvenile detention facility").
38. **"Juvenile Wellness Court" or "Wellness Court"**: The Hoopa Valley Tribe Na:tini-x'we' Na:xo'-xi-nayi-din Court.
39. **"Parent"**: Includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged in writing by both parents or established.
40. **"Participant"**: A child, eligible family member, or eligible household member admitted or court ordered to participate in the judge supervised treatment plan of the Juvenile Wellness Court.
41. **"Presenting Officer"**: The person who performs the duties and responsibilities set forth in section 8C of this code.
42. **"Probation"**: A legal status created by court order whereby a "juvenile delinquent" is permitted to remain in his home or free from detention under prescribed conditions and under the supervision of a person designated by the court. A "juvenile delinquent" on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.
43. **"Probation Officer"**: The person who performs the duties and responsibilities set forth in section 8B of this code.
44. **"Protective Supervision"**: A legal status created by court order under which a "juvenile delinquent" is permitted to remain in his home or is placed with a relative or other suitable individual under supervision and assistance is provided by the court, a health or social services agency or some other agency designated by the court.
45. **"Restitution"**: Financial or other reimbursement by the child to the victim, limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric or psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the

delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible non economic losses.

46. **"Restorative Justice"**: The settlement of a dispute and/or the repairing of relationships in accordance with Hoopa Tribal law and custom, pursuant to Title 2 of the Hoopa Valley Tribal Code.
47. **"Secure Juvenile Detention Facility"**: A facility which (a) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (b) restricts the movement of those placed in the locked cells or rooms, and (c) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq to the full extent it applies to Indian Tribes.
48. **"Shelter Home"**: A residential facility which is licensed to care for children under the age of eighteen (18) in an unrestricted setting.
49. **"Transfer to Tribal Court"**: Transferring a child from the jurisdiction of any county or state court to the jurisdiction of any tribal court according to chapter 7D of this code which results in the termination of the previous court's jurisdiction over that act.
50. **"Tribal Council"**: The Tribal Council of the Hoopa Valley Tribe.
51. **"Tribal Court"**: The Tribal Court of the Hoopa Valley Tribe.
52. **"Na:tini-x'we' Na:xo'-xi-nayi-din Consent Decree"**: An agreement which suspends a E:sdo' Na:Na: Xi:nay Court proceeding before adjudication and continues the supervision of the child, his eligible family member, and/or his eligible household member, under the terms and conditions mandated by the juvenile Na:tini-x'we' Na:xo'-xi-nayi-din court.
53. **"Na:tini-x'we' Na:xo'-xi-nayi-din Court Team"**: The Na:tini-x'we' Na:xo'-xi-nayi-din court team is comprised of the Na:tini-x'we' Na:xo'-xi-nayi-din court judge, court coordinator, probation officer/police department representative, alcohol and drug counselor, social services worker, school district representative, and other representatives as designated by the Chief Judge of the court.

## 2. DELINQUENT ACTS [SUBJECT TO SECURE DETENTION]

### A. Acts Against the Person

#### 1. Assault:

An assault is a threat or volitional act by a child, coupled with a present ability, to commit a violent physical contact with the person of another.

#### 2. Battery:

A battery is any willful and unlawful use of force or violence by a child making physical contact with the person of another.

#### 3. Harassment:

(a) Every child who, with intent to annoy, telephones or makes contact including by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the

person or property of the person addressed or any member of his or her family, commits harassment.

(b) Every child who makes repeated telephone calls or makes repeated contact including by means of an electronic communication device with intent to annoy another person at his or her residence or place of work, whether or not conversation ensues from making the telephone call or other contact, commits harassment.

(c) For purposes of this Section 3 the following provisions will apply:

(1) Any act committed by use of a telephone may be deemed to have been committed where the telephone call or calls were made or received.

(2) Any act committed by use of an electronic communication device or medium, including the Internet, may be deemed to have been committed when the electronic communication or communications were originally sent or first viewed by the recipient.

(3) "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term is defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(4) Nothing in this section shall apply to telephone calls or electronic contacts made in good faith which are reasonable under the circumstances and non threatening.

#### 4. Stalking:

(a) Any child who willfully and maliciously follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, commits the act of stalking.

(b) For the purposes of this section, "harasses" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

(c) The E:sdo' Na:Na: Xi:nay Court shall consider issuing an order restraining the delinquent from any contact with the victim. The length of any restraining shall order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(d) For purposes of this Section 4 the following will apply:

(1) "course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a child making the threat shall not be a bar to adjudication under this section.

(3) "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

## **B. Acts Against Property**

### 1. Destruction of Signs:

Any child who maliciously pulls down or defaces any sign of the Hoopa Valley Tribe, State, Federal Government, or any advertisement authorized by law commits the act of destruction of signs.

### 2. Destruction of Fences:

Any child who willfully destroys or, in any manner renders ineffective, a lawfully erected fence belonging to another person or the Hoopa Valley Tribe commits the act of fence destruction.

### 3. Joyriding:

(a) A child commits the act of joyriding, if he drives or takes away any motor vehicle without the consent of the owner or lawful possessor, or participates with any other person in such conduct, with the intent of temporarily depriving the owner or rightful possessor of the use of the same, or of temporarily making use of the motor vehicle.

(b) For purposes of this section, a motor vehicle may include, but is not limited to, automobiles, two and four-wheel all-terrain vehicles, snowmobiles, lawn mowers, boats, personal watercraft, canoes and bicycles.

### 4. Destruction of Property and Vandalism:

(a) Every child who maliciously commits any of the following acts with respect to any real or personal property not his or her own, commits the act of vandalism:

- (1) Defaces with graffiti or other inscribed material.
- (2) Damages.
- (3) Destroys.

(b) Whenever a child violates this section with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity including tribal government it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(c) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

### 5. Theft of Property:

(a) Every child who shall steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, commits the act of theft.

(b) One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, commits the act of theft.

### 6. Receiving Stolen Property:

(a) Every child who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or

obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, commits the act of receiving stolen property.

(b) Every child who, in another state, country, or reservation steals or embezzles the property of another, or receives such property knowing it to have been stolen or embezzled, and brings the same into the Hoopa Valley Indian Reservation, may be convicted and punished in the same manner as if such larceny, or embezzlement, or receiving had been committed in this reservation.

#### 7. Burglary:

(a) Every child who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, sealed cargo container (whether or not mounted on a vehicle), mine or any underground portion thereof, with intent to commit theft or any other delinquent act commits burglary.

### **C. Acts Involving Animals**

#### 1. Cruelty to Animals:

(a) Every child who maliciously and intentionally maims, mutilates, tortures, or wounds a domesticated living animal, or maliciously and intentionally kills any domesticated animal, commits the act of cruelty to animals.

(b) In this title the word "animal" includes every domesticated dumb creature; the words "torment," "torture," and "cruelty" include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; the word "domesticated" includes any living animal a person owns.

### **D. Acts Involving Conduct**

#### 1. Aiding and Abetting:

(a) Every child who assist or facilitates the commission of a crime or delinquent act, or promotes accomplishment of a crime or delinquent act is guilty of aiding and abetting.

(b) A child shall not be adjudicated as committing aiding and abetting if no person is adjudicated guilty of committing the underlying delinquent act or crime.

#### 2. Brandishing a Deadly Weapon:

(a) Every child who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded or any other deadly weapon in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm or other deadly weapon in any fight or quarrel has committed the act of brandishing a deadly weapon.

(b) As used in this code, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

(c) As used in this code, "deadly weapon" shall be defined as one likely to produce death or great bodily injury, including but not limited to firearms, bows, slingshots and knives.

#### 3. Brandishing Imitation Firearms:

(a) Every child who, except in self-defense, draws or exhibits an imitation firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm.

(b) For purposes of this section, an imitation firearm means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(c) As used in this section, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion.

#### 4. Concealed Weapons:

(a) Any child who shall go about in public places armed with a deadly weapon concealed upon his person unless he shall have a valid permit commits the act of concealed weapons.

(b) The court, in addition to any other disposition authorized by law, may confiscate and dispose of the weapons so carried.

(c) As used in this section, "deadly weapon" shall be defined as one likely to produce death or great bodily injury, including knives and firearms.

#### 5. Loaded Firearm in Vehicle:

(a) Any child who has a loaded firearm, in a vehicle within one mile of the Trinity River commits the act of a loaded firearm in vehicle.

(b) As used in this section, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion or other form of combustion and "loaded" means a firearm with a cartridge in the chamber, magazine, clip or cylinder.

#### 6. Disorderly Conduct:

(a) Disorderly conduct includes the following types of conduct:

(1) Any child who unlawfully fights in a public place or challenges another person in a public place to fight;

(2) Any child who maliciously and willfully disturbs another person by loud and unreasonable noise;

(3) Any child who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction; or

(4) A child and at least one other person who assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being requested or commanded to do so by a public officer.

(b) Any child who, as a result of violating subsection (4), personally causes damage to real or personal property, which is either publicly or privately owned, shall make restitution for the damage he or she caused, including, but not limited to, the costs of cleaning up, repairing, replacing, or restoring the property. Any restitution required to be paid pursuant to this subdivision shall be paid directly to the victim. If the court determines that the delinquent is unable to pay restitution, the court shall order the delinquent to perform community service, as the court deems appropriate, in lieu of the direct restitution payment.

(c) This section shall not preclude the court from imposing restitution in the form of a penalty assessment if the court, in its discretion, deems that additional restitution appropriate.

(d) The burden of proof on the issue of whether any child personally caused any property damage shall rest with the presenting officer or claimant. In no event shall the burden of proof on this issue shift to the child or any of several children to prove that he or she was not responsible for the property damage.

#### 7. Removal or Destruction of Graves and Antiques:

(a) Any child who shall willfully and knowingly remove or desecrate in any manner whatever any burial site or deface, alter, or destroy any cultural items, sacred objects, or items

of cultural patrimony located within the exterior boundaries of the Hoopa Valley Reservation shall be deemed to have committed the removal or destruction of graves and antiquities.

(b) For purposes of this section, the term –

(1) "Burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "Cultural items" means human remains and:

(A) "Funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later;

(B) "Sacred objects" which shall mean specific ceremonial objects which are used or possessed by Indians for traditional cultural religious purposes; and

(C) "Cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Indian group or culture itself, rather than property owned by an individual Indian, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian Tribe and such object shall have been considered inalienable by such Indian group at the time the object was separated from such group.

#### 8. Intimidation:

(a) Any child who willfully threatens to commit an act which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her family's safety, commits the act of intimidation.

For purposes of this section "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers.

#### 9. Possession of Destructive Devices:

(a) Every child who recklessly or maliciously has in his possession any destructive device or any explosive on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, cable road or cable car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings commits the act of possession of destructive devices.

(b) The term "destructive device," as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore).

(4) Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.

(5) Any breakable container that contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(6) Any sealed device containing dry ice (CO<sub>2</sub>) or other chemically reactive substances assembled for the purpose of causing an explosion by a chemical reaction.

(c) The term "explosive," as used in this chapter, shall mean any explosive defined in Section 12000 of the California Health and Safety Code.

#### 10. Setting Fire to Wooded Areas:

(a) A child commits the act of setting fire to wooded areas when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property. This shall not include forest land burned at specific times pursuant to tribal cultural purposes.

(b) In this section, the following terms have the following meanings:

(1) "Structure" means any building, or commercial or public tent, bridge, tunnel, or powerplant.

(2) "Forest land" means any brush covered land, cut-over land, forest, grasslands, or woods.

(3) "Property" means real property or personal property, other than a structure or forest land.

(4) "Inhabited" means currently being used for dwelling purposes whether occupied or not. "Inhabited structure" and "inhabited property" do not include the real property on which an inhabited structure or an inhabited property is located.

(5) "Maliciously" imports a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

(6) "Recklessly" means a child is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest land, or property. The risk shall be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A child who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

### **E. Alcohol and Controlled Substances**

#### 1. Possession of Controlled Substances:

Except as otherwise provided in this division, every child who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Schedule I, specified in paragraph (14), (15), or (20) of subdivision (d) of Schedule I, or specified in subdivision (b) or (c) of Schedule II, or specified in subdivision (h) of Schedule III, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state commits the act of possession of controlled substances.

#### 2. Sale of Controlled Substances:

Except as otherwise provided in this division, every child who transports, imports into the reservation, sells, furnishes, administers, or gives away, or offers to transport, import into the reservation, sell, furnish, administer, or give away, or attempts to import into the reservation or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Schedule I, specified in paragraph (14), (15), or (20) of subdivision (d) of Schedule I, or specified in subdivision (b) or (c) of Schedule II, or specified in subdivision (h) of Schedule III, or (2) any controlled substance classified in Schedule III, IV,



or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in the reservation.

## **F. Sexual Acts**

### **1. Prostitution:**

The act of prostitution consists of:

(a) Any child who solicits to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Solicitation or an agreement to engage in or engagement in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

### **2. Indecent Exposure:**

Every child who willfully and lewdly, either: (1) Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, (2) Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts.

### **3. Rape:**

Rape is an act of sexual intercourse accomplished by a child with a person not the spouse of the perpetrator, under any of the following circumstances:

(a) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the child committing the act. The presenting officer shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(b) Where the act or acts is/are accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person of another.

(c) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the child.

(d) Where a person is at the time unconscious of the nature of the act, and this is known to the child. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(e) Where a person submits under the belief that the child committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the child, with intent to induce the belief.

(f) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(g) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the delinquent, are factors to consider in appraising the existence of duress.

As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

The essential guilt of rape consists in the outrage to the child and feelings of the victim of the rape. Any sexual penetration, however slight, constitutes sexual intercourse and is sufficient to complete the crime.

In adjudications under this section in which consent is at issue, "consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in an adjudication.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

#### 4. Unlawful Sexual Intercourse:

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a child who is not the spouse of the child.

Any sexual penetration, however slight, constitutes sexual intercourse and is sufficient to complete the crime.

In adjudications under this section in which consent is at issue, "consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in an adjudication.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

**5. Sexual Misconduct:**

Any child who willfully and lewdly commits any lewd or lascivious act, including any of the other acts in this code, upon or with the body, or any part or member thereof, of a child or any person, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, commits sexual misconduct.

**G. Acts Involving Tribal Government**

**1. Disturbance of Legal Proceedings:**

(a) Disorderly, contemptuous, or insolent behavior committed, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(b) Behavior as specified in Section (a) committed while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(c) Any breach of the peace, noise, or other disturbance intended to interrupt the proceedings of any court.

(d) Willful disobedience of the terms as written of any process or court order lawfully issued by any court, including orders pending trial.

(e) Resistance willfully offered by any child to the lawful order or process of any court.

(f) The contumacious and unlawful refusal of any child to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(g) The publication of a false or grossly inaccurate report of the proceedings of any court.

(h) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as permitted by the Court.

**2. Obstructing or Resisting Public Officer:**

Any act intended to deter or prevent a public officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty.

**3. Threatening a School Officer or Public Official:**

Every child who, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an injury upon any person or property, when it reasonably appears to the recipient of the threat that such threat could be carried out, commits the act of threatening a school official or public officer.

**3. DELINQUENT ACTS [NOT SUBJECT TO SECURE DETENTION]**

**A. Incorrigible Child:**

Any child who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of his or her parents, guardian, or custodian.

#### B. Youth Protection Curfew

Pursuant to Title 41 of the Hoopa Valley Tribal Code, as amended, including its definitions and procedures, it is unlawful for child to loiter or remain in any public place within the exterior boundaries of the Hoopa Valley Indian Reservation during curfew hours, except as provided under Hoopa Valley Tribal Code §41.3.2.

#### C. Possession of Alcohol:

Any child who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public commits the act of possession of alcohol.

Where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, child at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages must be destroyed.

#### D. Possession of Tobacco:

Every child who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance commits the act of possession of tobacco.

### **4. ACTS BY A JUVENILE IN VIOLATION OF STATE LAW**

Every child that commits an act in violation of the California state criminal or juvenile law may be deemed to have committed a delinquent act under this title.

### **5. JURISDICTION OF THE E:SDO' NA:NA: XI:NAY COURT**

There is hereby established for the Hoopa Valley Tribe of the Hoopa Valley Indian Reservation a court to be known as the E:sdo' Na:Na: Xi:Nay Court. The court has original jurisdiction over all proceedings established under this code in which any Indian child or any child residing in or domiciled on the reservation is:

#### **A. Juvenile Delinquent**

Alleged to be a "juvenile delinquent" as defined in section 1C of this code; or

#### **B. Family In Need of Services**

Alleged to be a child whose family is "in need of services" as defined in section 1C of this code.

## **6. E:SDO' NA:NA: XI:NAY COURT PROCEDURE**

### **A. Non-Criminal Proceedings**

No adjudication upon the status of any child in the jurisdiction of the court shall be deemed criminal or be deemed a conviction of a crime or disqualify him from any tribal personnel system or military service application or appointment or from holding tribal office.

### **B. Use in Other Proceedings**

The adjudication, disposition, and evidence presented before the court shall be inadmissible as evidence against the child in any proceeding in another court, including the tribal court except as may be necessary for Constitutional double jeopardy proceedings.

### **C. Rules of Procedure**

The procedures in the court shall be governed by the rules of procedure for the tribal court that are not in conflict with this code.

## **7. RELATIONS WITH OTHER AGENCIES**

### **A. Cooperation and Grants**

The court is authorized to cooperate fully with any federal, state, tribal, public or private agency or person in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the Tribal Council in accordance with the Hoopa Valley Tribe Budget Ordinance if it involves an expenditure of tribal funds.

### **B. Social Services**

The court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

### **C. Contracts**

The court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the tribal council for the substance, mental health, or other treatment of children who have entered informal adjustments, consent decrees, juvenile wellness court decrees, or who have been adjudicated delinquent by the court. Placement of children pursuant to this section is subject to the approval of the tribal council before the expenditure of tribal funds.

### **D. Transfers from Other Courts**

The court may accept or decline transfers from other state or tribal courts involving alleged delinquent children for the purposes of adjudication and/or disposition.

## **8. E:SDO' NA:NA: XI:NAY COURT PERSONNEL**

### **A. E:sdo' Na:Na: Xi:Nay and Na:tini-x'we' Na:xo'-xi-nayi-din Court Judges**

#### **1. Appointment**

The E:sdo' Na:Na: Xi:Nay and Na:tini-x'we' Na:xo'-xi-nayi-din court judge(s) shall be appointed or elected in the same manner as the tribal court judge(s).

#### **2. Qualifications**

Each court shall be comprised of one judge who has training and/or experience in juvenile matters and in Indian Child Welfare Act matters.

#### **3. Powers and Duties**

In carrying out the duties and powers specifically enumerated under this code, the judge of the court shall have the same duties and powers as the judges of the tribal court.

#### **4. Disqualification or Disability**

The rules on disqualification or disability of a juvenile judge shall be the same as those rules that govern tribal court judges stated in 1 Hoopa Valley Tribal Code 1.2.07. A judge shall also be disqualified where he admits to, or is convicted of a alcohol or drug related act, or where he admits to any act against children and/or acts including crimes of violence where not more than ten years have passed since the date of such admission or conviction.

### **B. Probation Officer**

#### **1. Appointment**

The court shall appoint probation officer(s) to carry out the duties and responsibilities set forth in the juvenile and wellness court codes. The chief judge of the tribal court shall certify annually to the Tribal Council the number of qualified probation officer(s) needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "probation officers" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

#### **2. Qualifications**

The probation officer must have an educational background and/or prior experience in the field of delivering social services to youth.

#### **3. Resource Development**

The probation officer shall identify and develop resources on the reservation, in conjunction with the Court and the Tribal Council, to enhance each child's potential as a viable member of the tribal community.

#### 4. Duties.

- (a) Receive and investigate reports of delinquency and/or family in need of services;
- (b) Make investigations as provided in this code or as directed by the juvenile or Na:tini-x'we' Na:xo'-xi-nayi-din court;
- (c) Conduct legal and clinical screening for eligibility for Na:tini-x'we' Na:xo'-xi-nayi-din court;
- (d) Conduct weekly random and "for cause" alcohol and/or drug testing on all Na:tini-x'we' Na:xo'-xi-nayi-din court participants;
- (e) Conduct informal conferences with participants and their families;
- (f) Promptly file a report of delinquency or family in need with the presenting officer where recommended or warranted;
- (g) Make written reports to the E:sdo' Na:Na: Xi:nay Court judge as ordered;
- (h) Make weekly written reports to the Na:tini-x'we' Na:xo'-xi-nayi-din court team on needed services and how the Na:tini-x'we' Na:xo'-xi-nayi-din court team can assist the participant and their family in accessing needed services, training, or employment;
- (i) monitor compliance with consent decrees and dispositional orders; and
- (j) Perform such other duties in connection with the care, custody or transportation of children as the courts may require.

#### 5. Prohibited Duties

The probation officer shall not be employed as or be required to perform the duties of a Attorney for the Tribe, presenting officer other than those duties described above.

### C. Presenting Officer/Attorney for the Tribe

#### 1. Appointment

The court shall appoint a presenting officer(s) to carry out the duties and responsibilities set forth in the juvenile and wellness court codes. The chief judge of the tribal court shall certify annually to the Tribal Council the number of qualified presenting officers needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "presenting officers" or "juvenile presenting officers" or "juvenile petitioners" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section. "Attorney for the Tribe" is any attorney employed by the Office of Tribal Attorney and may perform all duties and responsibilities as or with a presenting officer and/or may act separately in presenting and pursuing adjudication of Tribal offenses in this code with the consent of the Chairman.

#### 2. Qualifications

The qualifications of the presenting officer(s) shall be at least the same as the qualifications for spokesperson admission to the tribal court.

#### 3. Duties

- (a) File petitions with the court as provided in this code;

- (b) Represent the tribe in all proceedings under this code; and
- (c) Perform such other duties as the court may order.

#### **D. Public Defender**

##### **1. Appointment**

The court shall appoint a public defender(s) to carry out the duties and responsibilities set forth in this code. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified public defenders needed to carry out the purpose of this code and the Tribal Council shall appropriate funds for such positions as it deems necessary and appropriate. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "public defenders" or "juvenile public defenders" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

##### **2. Qualifications**

The qualifications of the public defender(s) shall be the same as the qualifications for the official who acts as presenting officer.

##### **3. Duties**

- (a) Represent the child throughout all court proceedings;
- (b) Provide legal advice to the child; and
- (c) Perform such other duties as the court may order.

#### **E. Court Coordinator**

##### **1. Appointment**

The judge shall appoint a court coordinator to carry out the duties and responsibilities set forth in the juvenile and Na:tini-x'we' Na:xo'-xi-nayi-din court codes. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "court coordinator and/or Na:tini-x'we' Na:xo'-xi-nayi-din court coordinator" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

##### **2. Qualifications**

The court coordinator shall have an educational background and/or prior experience in alcohol and substance abuse education and counseling, and/or juvenile probation, and/or court administration.

##### **3. Duties**

- a. Set up and maintain the weekly docket case staffing conferences, and status hearings calendars;
- b. Provide notices of such hearings to the judge, the presenting officer, the probation officer, the alcohol and drug counselor, the social worker, the child



- and his parent, guardian, or custodian, the child's advocate or attorney and other individuals that the court requires to be present;
- c. Set up a paper (questionnaires and forms) and computer data collection and management system (database) for court records;
- d. Generate and work with the Na:tini-x'we' Na:xo'-xi-nayi-din court team to analyze Na:tini-x'we' Na:xo'-xi-nayi-din court and/or E:sdo' Na:Na: Xi:nay Court statistics bi-annually to improve court operations; and
- e. Conduct court grant management, budget modification, and other required administrative duties.

## **F. Alcohol and Drug Counselor**

### **1. Appointment**

The Tribal Council shall appoint an alcohol and drug counselor to carry out the duties and responsibilities required pursuant to the juvenile rehabilitation and Na:tini-x'we' Na:xo'-xi-nayi-din courts. The chief judge of the court shall certify annually to the Tribal Council the number of qualified alcohol and drug counselors needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "alcohol and drug counselors" or any other title which the council finds appropriate so long as they perform the duties and responsibilities set forth in this section.

### **2. Qualifications**

The alcohol and drug counselor must have an educational background and/or prior experience in alcohol and substance abuse education and counseling.

### **3. Resource Development**

Identify and develop resources in the community, in conjunction with the court and the tribal council, to enhance each child's potential as a viable member of the tribal community.

### **4. General Duties**

- (a) Provide alcohol and drug education and counseling services;
- (b) Promptly undertake a clinical assessment upon court order from the juvenile or Na:tini-x'we' Na:xo'-xi-nayi-din court judge, draft a report recommending an individualized treatment plan for participants;
- (c) Frequently review and amend treatment plan as necessary;
- (d) Make weekly written reports to the court team on the attendance and progress of court participants in their individualized treatment plans;
- (e) Attend weekly pre-hearing staffing conferences to update the court team on compliance and the treatment progress of each participant; and
- (f) Perform such other duties in connection with the care, custody, or transportation of children as the court may require.

### **5. Prohibited Duties**

The alcohol and drug abuse counselor shall not be employed as or required to perform the duties of a Attorney for the Tribe, presenting officer or law

enforcement official.

## **G. Social Worker**

### **1. Appointment**

The tribal council shall appoint a tribal social worker to carry out the duties and responsibilities set forth in the juvenile rehabilitation and Na:tini-x'we' Na:xo'-xi-nayi-din codes. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified social workers needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "social worker" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

### **2. Qualifications**

The social worker must have an educational background and/or prior experience in social work and specialized training in Indian Child Welfare Act process.

### **3. Resource Development**

Identify and develop resources in the community, in conjunction with the court and the tribal council, to enhance each child's potential as a viable member of the tribal community.

### **4. Duties**

- a. Receive and investigate reports of harm to children;
- b. Promptly file a report of delinquent act or family in need or services with the probation officer where recommended and warranted;
- c. Conduct interviews, home visits, and other monitoring to assist juvenile delinquents and Na:tini-x'we' Na:xo'-xi-nayi-din court participants and their families in identifying and obtaining financial, medical, educational, vocational, and other needed services;
- d. Make written reports to the juvenile and Na:tini-x'we' Na:xo'-xi-nayi-din court judges as ordered;
- e. Attend weekly court case staffing meetings to update the Na:tini-x'we' Na:xo'-xi-nayi-din court team on the home situations and needed services; and
- f. Perform such other duties in connection with the care, custody, or transportation of children as the court may require.

## **H. Na:tini-x'we' Na:xo'-xi-nayi-din Court Team**

### **1. Appointment**

The Na:tini-x'we' Na:xo'-xi-nayi-din court team shall include the Na:tini-x'we' Na:xo'-xi-nayi-din court judge, the court coordinator, probation officer, alcohol and drug counselor, social services worker, a school district representative, and a representative from the police department and may include the presenting officer/Attorney for the Tribe.

## **2. General Duties**

The duties of the Na:tini-x'we' Na:xo'-xi-nayi-din court team include:

- a. Providing status updates on participant progress to the Na:tini-x'we' Na:xo'-xi-nayi-din court judge during weekly pre-hearing staffing conferences;
- b. Making recommendations on the application of incentives and sanctions to participants; and
- c. Attending weekly status hearings to support the participants and hold them accountable.

### **I. Juvenile Advisory Board Chairperson [RESERVED]**

### **J. Additional Court Personnel**

The court may set qualifications and appoint additional E:sdo' Na:Na: Xi:nay Court personnel such as guardians ad litem, court appointed special advocates (CASAs), advocates, and/or referees whenever the court decides that it is appropriate to do so.

## **9. RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS**

### **A. Privilege Against Self-Incrimination**

A child alleged to be a "juvenile delinquent" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct legal and clinical screening for Na:tini-x'we' Na:xo'-xi-nayi-din court eligibility and/ or medical assessment or treatment for alcohol or substance abuse under section 15C of this code when the child's health and well-being are in serious jeopardy or there is evidence of harm to the child's physical or mental health or welfare.

### **B. Admissibility of Evidence**

In a proceeding on a petition alleging that a child is a "juvenile delinquent":

1. an out-of-court statement that would be inadmissible in a criminal matter in tribal court shall not be received in evidence;
2. evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;
3. unless advised by counsel, the statements of a child made while in custody to a probation officer, including statements made during a preliminary inquiry, informal adjustment or predispositional study, shall not be used against the child in determining the truth of allegations of the petition;
4. a valid out-of-court admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence;

5. neither the fact that the child has at any time been a party to a "family in need of services" proceeding conducted under Tribal law other than this code nor any information obtained during the pendency of such proceedings shall be received into evidence.

**C. Fingerprinting and Photographs**

A child in custody shall not be fingerprinted nor photographed for criminal identification purposes except by order of the court. If an order of the court is given, the fingerprints or photographs shall be used only as specified by the court.

**D. Right to Retain Counsel**

In "juvenile delinquent" and "family in need of supervision" cases under this code, the child and his parent, guardian or custodian shall be advised by the court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the court in its discretion may appoint counsel for the child.

**E. Explanation of Rights**

At his first appearance before the court, and at each subsequent appearance before the court, the child alleged to be a "juvenile delinquent" or a child whose family is "in need of services" under this code and the child's parent, guardian or custodian shall be informed by the court of the following:

1. the nature and cause of the accusation against him;
2. the right to an advocate or attorney at his own expense;
3. the right to be secure in their person, houses, papers, and effects and against unreasonable search and seizures, and not to have a warrant issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
4. the right not to be placed in jeopardy twice for the same offense;
5. the right not to testify against himself;
6. the right to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor;
7. the right to a speedy and public trial;
8. the right to testify and to introduce evidence on his own behalf; and
9. the possible consequences if the allegations in the petition are found to be true.

**10. TAKEN INTO CUSTODY**

**A. Taking A Child Into Custody**

A law enforcement officer may take a child into custody when:

1. the child commits a "delinquent act" in the presence of the officer; or
2. the officer has a reasonable suspicion to believe a "delinquent act" has been committed by the child being detained; or
3. an appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child into custody.

**B. Provision of Rights**

At the time the child is taken into custody as an alleged "juvenile delinquent," the arresting officer shall give the following warning:

1. the child has a right to remain silent;
2. anything the child says can be used against the child in court;
3. the child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning, and;
4. the child has a right to an advocate or attorney at his own expense.

**C. Release or Delivery from Custody**

A law enforcement officer taking a child into custody shall give the warnings listed in section 10B to any child he takes into custody prior to questioning and then shall do one of the following:

1. release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
2. release the child to a relative or other responsible adult if the child's parent, guardian or custodian consents to the release. (If the child is ten (10) years of age or older, the child and his parent, guardian or custodian must both consent to the release); or
3. deliver the child to the probation officer, or to a juvenile facility as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or drugs.

**D. Review by Probation Officer or Juvenile Facility**

The probation officer or juvenile official at the juvenile facility (as designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:

1. the act is serious enough to warrant continued detention and;
2. there is probable cause to believe the child has committed the act(s) alleged; and

3. there is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or
4. there is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

#### **E. Notification of Family**

If a child is taken into custody and not released to his parent, guardian or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

#### **F. Criteria for Selecting Juvenile Facility**

If the probation officer or juvenile official at the juvenile facility (as designated by the court) determines that there is a need for continued custody of the child in accordance with section 9D of this code, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

1. A child may be detained in a **Secure Juvenile Detention Facility** (as defined in section 1C of this code) as designated by the court only if one or more of the following conditions are met:
  - (a) the child is a fugitive from another jurisdiction wanted for a felony act; or
  - (b) the child is charged with a crime of violence with a deadly weapon or which has resulted in a serious bodily injury; or
  - (c) the child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
  - (d) the child is charged with committing one of the following acts which would be a criminal act if the child were an adult: vehicular homicide, abduction, rape, arson, burglary or robbery or
  - (e) the child is already detained or on conditioned release for another "delinquent act,"
  - (f) the child has a demonstrable recent record of willful failures to appear at E:sdo' Na:Na: Xi:nay Court proceedings; or
  - (g) the child has made a serious escape attempt; or
  - (h) the child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child.
2. A child may be housed in a **Juvenile Shelter Care Facility** (as defined in section 1C of this code) as designated the court only if one of the following conditions exist:
  - (a) one of the conditions described in section 10F(l) above exists; or

- (b) the child is unwilling to return home or to the home of an extended family member; or
  - (c) the child's parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the child to return to his home;
  - (d) there is an evident harm to the child's physical or mental health or welfare in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.
3. A child may be referred to an **Alcohol or Substance Abuse Emergency Shelter or Halfway House** (as defined in section 1C of this code) if it is determined that there is a need for continued custody of the child in accordance with section 10D of this code and (1) the child has been arrested or detained for a "delinquent act" relating to alcohol or substance abuse, (2) there is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and (3) the child is not deemed to be a danger to himself or others.

**G. Mandatory Reporting to Social Services**

If the probation officer suspects that abuse or neglect has occurred in the household, the probation officer shall make a report to the tribe's social services agency in accordance with the section 4.7 of Title 14 of the Hoopa Valley Tribal Code.

If the child has been taken into custody under the provisions for interim care (see section 18, below), the probation officer may transfer the child to the appropriate juvenile facility.

**11. DETENTION HEARING**

**A. Requirement of Detention Hearing**

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within forty-eight (48) hours, inclusive of holidays and weekends, of the child's initial detention under chapter 10 of this code.

**B. Purpose of Detention Hearing**

The purpose of the detention hearing is to determine:

1. whether probable cause exists to believe the child committed the alleged "delinquent act"; and
2. whether continued detention is necessary pending further proceedings.

**C. Notice of Detention Hearing**

Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:

1. the name of the court;
2. the title of the proceedings;

3. a brief statement of the "delinquent act" the child is alleged to have committed; and
4. the date, time, and place of the detention hearing.

**D. Detention Hearing Procedure**

Detention hearings shall be conducted by the E:sdo' Na:Na: Xi:nay Court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under chapter 9 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the court shall be admitted.

**E. Standards to be Considered at Detention Hearing**

The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in sections 10D and 10F of this code.

**F. Finding at Detention Hearing**

The court shall issue a written finding stating the reasons for release or continued detention of the child. If the court determines that there is a need for continued detention, the court shall specify where the child is to be placed until the adjudicatory hearing.

**G. Rehearing the Detention Matter**

If the child is not released at the detention hearing, and a parent, guardian, or custodian or other immediate or extended family member was not notified of the hearing and did not appear or waive appearance at the hearing the court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

**12. INITIATION OF PROCEEDINGS**

**A. Investigation by the Probation Officer**

The probation officer shall make an investigation within twenty-four (24) hours of the detention hearing or the release of the child to his parent, guardian or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the probation officer shall:

1. recommend that no further action be taken; or
2. recommend to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under sections 12B and 12C of this code; or
3. recommend that the presenting officer file a petition under section 12D of this code. The petition shall be filed within forty-eight (48) hours after the detention hearing is concluded if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days; and/ or



4. screen for legal and clinical eligibility for participation in the Na:tini-x'we' Na:xo'-xi-nayi-din court, and recommend in the petition a request for Na:tini-x'we' Na:xo'-xi-nayi-din court admission.

**B. Informal Adjustment**

1. During the course of the preliminary investigation to determine what further action shall be taken, the probation officer shall confer with the Tribal personnel that effectuated the detention and with the child and the child's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
2. The probation officer shall consider the following factors in determining whether to proceed informally or to file a petition:
  - (a) nature and seriousness of the act;
  - (b) previous number of contacts with the police, probation officer or the court;
  - (c) age and maturity of the child;
  - (d) attitude of the child regarding the act;
  - (e) willingness of the child to participate in a voluntary program;
  - (f) participation and input from the child's parent, guardian or custodian, and;
  - (g) eligibility for juvenile Na:tini-x'we' Na:xo'-xi-nayi-din court. The Na:tini-x'we' Na:xo'-xi-nayi-din court team may accept or reject the proposed participant upon recommendation by probation officer.

**C. Informal Conference**

1. After conducting a preliminary investigation, the probation officer shall hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case.
2. The probation officer shall inform the child, the child's parent, guardian or custodian of their basic rights under chapter 9 of this code. Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.
3. At the informal conference, upon the basis of the information obtained during the preliminary investigation, the probation officer may enter into a written agreement with the child and the child's parent, guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months. The child and the child's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.
4. The child shall be permitted to be represented by counsel at the informal conference.
5. If the child does not desire to participate voluntarily in a diversion program and informal adjustment is determined not to be appropriate, the probation officer shall recommend that the presenting officer file a petition under section 12D of this code.

6. Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.
7. If the child fails to successfully complete the terms of his informal adjustment agreement, the probation officer may recommend that a petition be filed in the case under section 12D of this code.
8. The probation officer shall be responsible for ensuring evidence is obtained and maintained sufficient to support the probation recommendation including declarations of witnesses and insuring preservation of physical evidence by Tribal Agencies or the probation officer himself.

**D. Filing and Content of Petition**

Formal "juvenile delinquent" proceedings shall be instituted by a petition filed by the presenting officer on behalf of the Tribe and in the interests of the child. The petition shall be entitled, "In the matter of a child" and shall set forth with specificity:

1. the name, birth date, residence, and tribal affiliation of the child;
2. the names and residences of the child's parent, guardian or custodian;
3. a citation to the specific section(s) of this code which give the court jurisdiction over the proceedings;
4. a citation to the specific sections of this code defining which delinquent acts the child is alleged to have committed;
5. a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred;
6. whether the child is in custody and, if so, the place of detention and time he was taken into custody; and
7. whether or not participation in Na:tini-x'we' Na:xo'-xi-nayi-din court is being requested.

**E. Issuance of Summons**

After a "juvenile delinquent" petition has been filed, the court shall direct the issuance of summons to:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;
4. appropriate medical and/or alcohol rehabilitation experts; and;
5. any other person the court deems necessary for the proceedings.

**F. Content of the Summons**

The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under chapter 9 of this code. A copy of the petition shall be attached to the summons.

**G. Service of the Summons**

The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a law enforcement official or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

**13. CONSENT DECREE**

**A. Availability of Consent Decree**

At any time after the filing of a "juvenile delinquent" petition, and before the entry of a judgment, the court may, on motion of the presenting officer or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the probation officer and agreed to by all the parties affected. This may include admitting the juvenile to the Na:tini-x'we' Na:xo'-xi-nayi-din court program under its terms and conditions. The court's order continuing the child under supervision under this section shall be known as a "consent decree." Every "consent decree" shall contain a knowing waiver by the child and his parent, custodian or guardian and counsel (if hired or appointed) of the time frames set in Section 14B of this code to a date specific.

**B. Objection to Consent Decree**

If the child objects to a consent decree or if for any reason a consent decree is not executed by all parties and entered in the court minutes, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the presenting officer after consultation with the probation officer, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

**C. Duration of Consent Decree**

A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the probation officer. Prior to the expiration of the six (6) months period, and upon the application of the probation officer or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. If the child objects to the extension the court shall hold a hearing and make a determination on the issue of extension.

If the child participates in the wellness court program the consent decree shall remain in force until he is discharged from the program by a wellness court order.

**D. Failure to Fulfill Terms and Conditions**

If, either prior to a discharge by the probation officer or expiration of the consent decree, the child fails to fulfill the terms of the decree, the presenting officer may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to chapter 14 of this code. If the child is found to have violated the terms of the consent decree, the court may:

1. extend the period of the consent decree; or
2. make any other disposition which would have been appropriate in the original proceeding.

**E. New Delinquent Act Petition**

If either prior to discharge or expiration of the consent decree, a new "juvenile delinquent" complaint is filed against the child and the probation officer has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the presenting officer may:

1. file a petition to revoke the consent decree in accordance with the section 13D of this code; and
2. file a petition on the basis of the new complaint which has been filed against the child.

**F. No Inconsistent E:sdo' Na:Na: Xi:nay Court Orders**

The E:sdo' Na:Na: Xi:nay Court shall not make dispositions inconsistent with Na:tini-x'we' Na:xo'-xi-nayi-din court dispositions prior to discharge from the Na:tini-x'we' Na:xo'-xi-nayi-din court program by a Na:tini-x'we' Na:xo'-xi-nayi-din court order.

**G. Dismissal of Petition**

A child who is discharged by or who completes a period under supervision without reinstatement of the original "delinquent act" petition shall not again be proceeded against in any court for the same act alleged in the petition or an act based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

**14. ADJUDICATION**

**A. Purpose and Conduct of Adjudicatory Hearing**

Hearings on "juvenile delinquent" petitions shall be conducted by the court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a "delinquent act." At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 9 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

**B. Time Limitations on Adjudicatory Hearings**

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the "juvenile delinquent" petition by the court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the "juvenile delinquent" petition by the court. Failure to comply with the provisions of this section or obtain a signed waiver under 13A of this shall result in dismissal of the petition.

**C. Notice of Hearing**

Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 12F and 12G of this code.

**D. Denial of Allegations**

If the allegations in the "juvenile delinquent" petition are denied, the E:sdo' Na:Na: Xi:nay Court shall set a date, in accordance with section 14B above, to hear evidence on the petition.

**E. Admission of Allegations**

If the child admits the allegations of the petition, the court shall consider a disposition only after a finding that:

1. the child fully understands his rights under chapter 9 of this code, and fully understands the consequences of his admission;
2. the child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for court action; and
3. the child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

**F. "Juvenile Delinquent" Finding After Admission**

If the court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 16 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

**G. "Juvenile Delinquent" Finding After Hearing**

If the court finds on the basis of clear and convincing evidence that the allegations contained in the petition are true, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 16 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.

## **H. Dismissal of Petition**

If the court finds that the allegations on the "juvenile delinquent" petition have not been established based on clear and convincing evidence it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

## **15. PREDISPOSITION STUDIES: REPORTS AND EXAMINATIONS**

### **A. Predisposition Study and Report**

The court shall direct the probation officer to prepare a written predisposition study and report for the court concerning the child, the child's family, environment, and any other matter relevant to need for treatment or other appropriate disposition of the case when:

1. the child has been adjudicated as a "juvenile delinquent"; or
2. a notice of intent to admit the allegations of the petition has been filed.

### **B. Contents of Predisposition Study and Report**

The report shall contain a specific plan for the child, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

### **C. Medical Assessment and Treatment for Alcohol and/ or Substance Abuse**

The court may order a medical assessment of a child arrested or detained for a "delinquent act" relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well-being.

### **D. Pre-Adjudication Examination of Emotionally or Developmentally Disabled Child**

Where there are indications that the child may be emotionally disturbed or developmentally disabled, the court, on a motion by the presenting officer or that of the child, may order the child to be tested by a qualified psychiatrist, psychologist, or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

### **E. Pre-Disposition Examinations**

The court may order an examination of a child adjudicated as a "juvenile delinquent" by a physician, psychiatrist or psychologist. The court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing.

**F. Transfer for Diagnosis**

The court may order that a child adjudicated as a "juvenile delinquent" be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the court be given a written report at the end of that period indicating the disposition which appears most suitable.

**G. Submission of Reports**

Evaluations, assessments, dispositional reports and other material to be considered by the court in a juvenile hearing shall be submitted to the court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

**16. DISPOSITION PROCEEDINGS**

**A. Purpose and Conduct of Disposition Hearing**

Disposition hearings shall be conducted by the court separate from other proceedings. The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "delinquent act." The court shall make and record its dispositional order in accordance with sections 16E and chapter 17 of this code. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 9 of this code as to any matter other than the adjudicated charge. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.

**B. Time Limitations on Disposition Hearings**

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing.

**C. Notice of Disposition Hearing**

Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 12F and 12G of this code.

**D. Evidence and Reports**

In the disposition hearing, the court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the

child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

#### **E. Disposition Options**

If a child is found by the court to be a "juvenile delinquent," the court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

1. permit the child to remain with parent, guardian or custodian, subject to such conditions and limitations as the court may prescribe;
2. place the child in the legal custody of an immediate or extended family member or other suitable person, subject to such conditions and limitations as the court may prescribe;
3. order the child to pay restitution, restorative justice, engage in community service or other dispositional option (as defined in section 1C of this code);
4. place the child under protective supervision (as defined in section 1C of this code) under such conditions- and limitations as the court may prescribe;
5. place the child on probation (as defined in section 1C of this code) under such conditions and limitations as the court may prescribe; or
6. place the child in a juvenile facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility (see section 1C of this code for individual definitions);
7. order the child to get a clinical assessment and to participate in the Na:tini-x'we' Na:xo'-xi-nayi-din court, under its terms and conditions.

### **17. REVIEW, MODIFICATION, REVOCATION, EXTENSION OR TERMINATION OF DISPOSITIONAL ORDERS**

#### **A. Mandatory Review of Disposition Order**

Dispositional orders are to be reviewed at the court's discretion at least once every six (6) months. The first review for a Na:tini-x'we' Na:xo'-xi-nayi-din court participant shall be upon expulsion from the wellness program, by Na:tini-x'we' Na:xo'-xi-nayi-din court order or graduation.

#### **B. Modification, Revocation, or Extension of Disposition Order**

The court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of;

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;



4. the probation officer;
5. the presenting officer;
6. the institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
7. the court on its own motion.

**C. Hearing to Modify, Revoke or Extend Disposition Order**

A hearing to modify, revoke or extend the disposition order shall be conducted according to sections 16A, 16C, 16D and 16E of this code.

**D. Automatic Termination of Disposition Order**

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue beyond the child's 19<sup>th</sup> birthday. The records concerning the child shall be destroyed according to section 20C of this code.

**18. FAMILY IN NEED OF SERVICES – INTERIM CARE**

**A. Limitation on Taking Juvenile Into Custody**

No child whose family is the subject of a proceeding alleging that the family is "in need of services" (as defined in section 1C of this code) may be taken into custody unless such taking into custody is in accordance with provision for "interim care" (as defined in section 1C of this code) set forth in sections 18A through 18J of this code.

**B. Interim Care Without Court Order**

A child may be taken into interim care by a law enforcement officer without order of the court only when:

1. the officer has reasonable grounds to believe that the child is in circumstances which constitute a harm to the child's physical or mental health or welfare; or
2. an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement ordered by the court under chapter 19 of this code.

**C. Procedure for Interim Care**

A law enforcement official taking a child into custody under the interim care provisions of this code shall immediately:

1. Inform the child of the reasons for the custody;
2. contact the probation officer who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
3. take the child to the placement specified by the probation officer, or in the event of the unavailability of a probation officer, to an appropriate juvenile sh

4. the probation officer;
5. the presenting officer;
6. the institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
7. the court on its own motion.

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2. contact the probation officer who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
3. take the child to the placement specified by the probation officer, or in the event of the unavailability of a probation officer, to an appropriate juvenile shelter care facility as designated by the court; and,

4. inform the child's family in accordance with section 18D of this code.

**D. Notification of Family**

The law enforcement officer or the probation officer shall immediately notify the child's parent, guardian or custodian of the child's whereabouts, the reasons for taking the child into custody, and the name and telephone number of the probation officer who has been contacted. Efforts to notify the child's parent, guardian or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

**E. Time Limitation on Interim Care**

Under no circumstances shall any child taken into interim care under section 18B of this code be held involuntarily for more than forty-eight (48) hours.

**F. Restrictions on Placement**

A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal acts. If a child taken into interim care is placed in a facility used for the detention of "juvenile delinquents" or alleged "juvenile delinquents," he must be detained in a room separate from the "juvenile delinquents" or alleged "juvenile delinquents."

**G. Restrictions on Transportation**

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

**H. Voluntary Services**

The probation officer shall offer and encourage the child and the child's family, guardian or custodian to voluntarily accept social services.

**I. Voluntary Return Home**

If a child has been taken into interim care under the provisions of section 1-18B of this code and the child's parent, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian or custodian or as arranged by the probation officer.

**J. Shelter and Family Services Needs Assessment**

If the child refuses to return home and if no other living arrangements agreeable to the child and to the child's parent, guardian or custodian agree to the child's return home, the

child shall be returned home as soon as practicable by the child's parent, guardian or custodian. The probation officer also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

## **19. FAMILY IN NEED OF SERVICES – PROCESS**

### **A. Who May Submit Requests**

Requests stating that a family of a juvenile delinquent is "in need of services" or referring the child to Na:tini-x'we' Na:xo'-xi-nayi-din court may be submitted by the child; the child's parent, guardian or custodian; an appropriate social services agency; and/or the probation officer. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school.

### **B. Reports of Family in Need of Services and Requests for Wellness Court Admission**

Reports of family in need of services and requests for Na:tini-x'we' Na:xo'-xi-nayi-din court admission shall be made to the probation officer and must establish harm to the child's physical or mental health or welfare. The Probation Officer shall assist either a child or a child's parent, guardian or custodian, and household members in obtaining appropriate and available services as well as screening and recommending the child for Na:tini-x'we' Na:xo'-xi-nayi-din court admission.

### **C. Investigation by the Probation officer**

The probation officer shall make an investigation within twenty-four (24) hours of the filing of a request for a "family in need of services." Upon the basis of his investigation, the probation officer shall:

1. recommend that no further action be taken; or
2. suggest to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under sections 19D and 19E of this code; or
3. recommend that the presenting officer file a petition under section 12D of this code. The petition shall be filed within forty-eight (48) hours if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days and must establish harm to the child's physical or mental health or welfare; and/ or
4. screen for legal and clinical eligibility for participation in the Na:tini-x'we' Na:xo'-xi-nayi-din court.

### **D. Informal Adjustment**

1. During the course of the preliminary investigation to determine what further action shall be taken, the probation officer shall confer with the child and the child's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.

2. The probation officer shall consider the following factors in determining how to proceed informally:
  - (a) nature and seriousness of the act including whether facts establish harm to the child's physical or mental health or welfare;
  - (b) previous number of contacts with the police, probation officer or the court;
  - (c) age and maturity of the child;
  - (d) attitude of the child regarding the act;
  - (e) willingness of the child to participate in a voluntary program;
  - (f) participation and input from the child's parent, guardian or custodian, and;
  - (g) eligibility for juvenile Na:tini-x'we' Na:xo'-xi-nayi-din court. The Na:tini-x'we' Na:xo'-xi-nayi-din court may accept or reject the proposed participant.

**E. Informal Conference**

1. After conducting a preliminary investigation, the probation officer shall hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case.
2. The probation officer shall inform the child, the child's parent, guardian or custodian of their basic rights under chapter 9 of this code. Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.
3. At the informal conference, upon the basis of the information obtained during the preliminary investigation, the probation officer may enter into a written agreement with the child and the child's parent, guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months. The child and the child's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.

Particular conditions may include:

- (1) Diversion Program.
  - (2) Na:tini-x'we' Na:xo'-xi-nayi-din court. The probation officer may refer the child and the child's family to Na:tini-x'we' Na:xo'-xi-nayi-din court, provided that the juvenile is legally and clinically eligible for Na:tini-x'we' Na:xo'-xi-nayi-din court, and provided that the Na:tini-x'we' Na:xo'-xi-nayi-din court team subsequently accepts the family into the program. If accepted, the child shall remain in the Na:tini-x'we' Na:xo'-xi-nayi-din court program for as long as the Na:tini-x'we' Na:xo'-xi-nayi-din court team deems necessary.
  - (3) Referral to social services. The probation officer may refer the family to appropriate social services agencies, in combination with or independently from the options described above.
4. The child shall be permitted to be represented by counsel at the informal conference.
  5. If the child does not desire to participate voluntarily in a plan of treatment under number 3, above, the probation officer may recommend that the presenting officer file a petition under section 12D of this code.

6. Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.
7. If the child fails to successfully complete the terms of his informal adjustment agreement, the probation officer may recommend that a petition be filed in the case under section 12D of this code.

## **20. E:sdo' Na:Na: Xi:nay Court Records**

### **A. E:sdo' Na:Na: Xi:nay Court Records**

A record of all hearings under this code shall be made and preserved. All E:sdo' Na:Na: Xi:nay Court records shall be confidential and shall not be open to inspection to any except as provided in Section 20D.

### **B. Law Enforcement Records**

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any except as provided in Section 20D.

### **C. Destruction of Records**

When a child who has been the subject of any E:sdo' Na:Na: Xi:nay Court proceeding reaches his eighteenth (18th) birthday, or if the disposition order extends beyond his eighteenth (18th) birthday then not later than the child's 19<sup>th</sup> birthday, the court shall order the clerk of the court to destroy both the law enforcement records and the court records. The clerk of the court shall respond to all records inquiries as if no records had ever existed.

### **D. Confidentiality & Release of Records.**

1. Any information received under this Code which could identify any child or the person(s) responsible for the child's welfare, or the person making reports shall be confidential. Any person who willfully releases or permits the release of any such information to persons or agencies not permitted by this section shall be guilty of an illegal act. Information received pursuant to this Code may be released, on a need to know basis, and only as necessary to serve and protect the child. Release of the identity of persons reporting child abuse is strictly prohibited unless by specific court order requiring the information to remain confidential and subjecting any entity or person receiving the information pursuant to the order to penalties for violation of such order.
2. Information and records maintained pursuant to this Code may only be released on a need to know basis to the following:
  - a. Courts of competent jurisdiction, upon finding that access to the records may be necessary for determination of an issue before the court. Access shall be limited to inspection by the court only, unless the court determines that disclosure of the records to interested parties is necessary for the resolution of an issue pending before it;

- b. Properly constituted authorities or agencies, investigating a report of known or suspected child abuse or neglect or a delinquent act, or providing services to a child or family relating to a known or suspected case of child abuse or neglect or a delinquent act, including police departments, prosecutors and attorney generals;
  - c. A physician examining or treating a child, or the director or a person specifically designated in writing by such director of any hospital or other medical institution where a child is being treated, where the physician or the director or his or her designee suspect the child of being an abused or neglected child or where it is determined the child has committed a delinquent act;
  - d. Any agency or individual authorized, contracted or licensed to diagnose, care or treat a child who is the subject of a report of abuse or neglect or where it is determined the child has committed a delinquent act;
  - e. A person, including but not limited to a guardian ad litem, attorney for the child, permanent foster or adoptive parent, who is responsible for the welfare of the child named.
  - f. A duly authorized official of the Tribe.
3. Information and records maintained pursuant to this Code shall be released to a delinquent child or the parents of a delinquent child, after a court proceeding has been initiated regarding a delinquent act of the child.
4. Information received pursuant to this Act may be released to sources other than those identified in subsections (2) and (3) only when a written authorization from an individual designated in subsection (3) specifically provides consent to have the record released or reviewed.
5. When information is released under subsection (2) or (4), the following rules shall apply:
- a. Medical information including diagnosis and past history of disease or disability of a particular individual, shall remain the property of the medical consultant generating the record and an individual requesting this record shall be referred to the original medical consultant for release of that information;
  - b. Records shall be reviewed only in designated areas within Tribal agency or Court offices. The records shall not be removed from the premises;
  - c. Records shall be released only upon an individual's signed and dated written request stating specifically:
    - 1. What portion of the record is desired;
    - 2. Whether the record is desired orally, through review or by receipt of reproduced copies of the record requested;
    - 3. The name of the individual authorized to receive the record or to review the record, and the individual's agency connection, if any;
    - 4. The purpose for which the record is being sought;
    - 5. The period of time the authorization is valid, not to exceed 90 days;
6. Before records are released or reviewed, the Court in the interest of protecting rights of any person contained in or interested in the records may issue the following orders:
- a. Block out the name or other portion of the record identifying the child or any other person;

- b. Reproduce a copy of the page from which the portion of the record was blocked out; and
- c. Allow the individual requesting the information to receive or to review the blocked out record.

## 21. JUVENILE APPEALS

### A. Who Can Appeal

Any party to a court hearing may appeal a final court order, including all transfer, adjudication and/or disposition orders except that the Tribe cannot appeal disposition order.

### B. Time Limit for Appeal

Any party to appeal a final court order or disposition shall file a written notice of appeal with the court within thirty (30) days of the final order or adjudication.

### C. Record

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.

### D. Stay of Appeal

A final court order or disposition of a hearing may be stayed by such appeal.

### E. Conduct of Proceedings

All appeals shall be conducted in accordance with the tribal code and tribal court rules of procedure so long as those provisions are not in conflict with the provisions of this code.

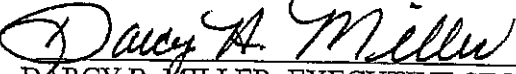
## CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council is composed of eight members, of which seven (7) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held this 24th day of October, 2002; that this Ordinance was adopted at said meeting by a vote of five(5) for and one (1) against; and that since its adoptions this Ordinance has not been altered, rescinded, or amended in any way.

DATED THIS 24TH DAY OF OCTOBER, 2002.

  
CLIFFORD L. MARSHALL, CHAIRMAN  
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:

  
DARCY B. MILLER, EXECUTIVE SECRETARY  
HOOPA VALLEY TRIBAL COUNCIL

Approved October 24, 2002